Evidence—Insurance—Burden of Proof of Suicide—[Federal].—Insured was shot in his room apparently by his own revolver, the outer door leading to his quarters being locked. Other evidence tended to show that he enjoyed good health, was of cheerful disposition, and had planned an outing that evening. The life insurance policy contained a clause limiting defendant's liability if insured committed suicide within a year from the date of issue. In a suit on the policy there was verdict and judgment for plaintiff. On appeal it was urged that the finding of the jury was against the weight of the evidence. *Held*, the burden of proof of suicide was on the defendant and there was sufficient evidence to justify the jury's finding. *Metropolitan Life Ins. Co. v. Hogan*, 62 F. (2d) 135 (C.C.A. 7th 1932).

The beneficiary of a life insurance policy ordinarily recovers on proof of death. A suicide clause gives defendant an affirmative defense, but defendant has the burden of establishing this defense. *Home Benefit Ass'n. v. Sargent*, 142 U.S. 691, 12 Sup. Ct. 332, 35 L. Ed. 1160 (1892); *Ferrero v. Nat'l. Council of Knights, etc.*, 309 Ill. 476, 141 N.E. 130 (1923); 5 Wigmore, Evidence (2d ed. 1923), 500, § 2510 (b). Thus the decision seems sound.

The court may be criticized, however, for broadly stating that in order to overcome the presumption against suicide the insurer must show that death was self-inflicted. The defendant in a suit on a life insurance policy has this burden, not because of any presumption, but because he must establish the affirmative defense of suicide. *Modern Woodmen of America v. Craiger*, 175 Ind. 30, 92 N.E. 113 (1910). Where the plaintiff sues on an accident insurance policy plaintiff has the burden of proving that insured's death was accidental. *Travelers' Ins. Co. v. McConkey*, 127 U.S. 661, 8 Sup. Ct. 1360, 32 L. Ed. 308 (1888); *Burkett v. N.Y. Life Ins. Co.*, 56 F. (2d) 105 (C.C.A. 5th 1932); *Wilkinson v. Aetna Life Ins. Co.*, 240 Ill. 205, 88 N.E. 550, 130 Am. St. Rep. 269, 25 L.R.A. (N.S.) 1256 (1909). This is well illustrated by *Mutual Life Ins. Co. v. Gregg*, 32 F. (2d) 567 (C.C.A. 6th 1929), where plaintiffs disclaimed their causes of action on double indemnity riders (on which they would have had the burden of proving accidental death) in order to throw the burden of establishing suicide on defendants.

Some of the cases which apparently put the burden of establishing suicide on the defendant, even though the suit is on an accident insurance policy, may be explained on the ground that the defendants misguidedly pleaded suicide instead of making a general denial, thus tempting the courts into error. *Travelers' Ins. Co. v. Allen*, 237 Fed. 78 (C.C.A. 8th 1916); *Wiger v. Mutual Life Ins. Co.*, 205 Wis. 95, 236 N.W. 534 (1931). See *Landau v. Pacific Mut. Life Ins. Co.*, 305 Mo. 542, 267 S.W. 370 (1924), where the court stated that insurer's affirmative plea of suicide in an action on an accident insurance policy merely served to confuse the issue; the burden of negativing suicide was held to be on plaintiff.

Because of the presumption against suicide, defendant has the burden of going forward even where the suit is on an accident insurance policy. If no evidence is introduced, plaintiff wins. *Messervey v. Standard Accident Ins. Co., etc.*, 58 F. (2d) 186 (C.C.A. 2d 1932), cert. denied 286 U.S. 566, 52 Sup. Ct. 647, 76 L. Ed. 1298 (1931). But the presumption is rebuttable, and vanishes when evidence of suicide is produced. *Pilot Life Ins. Co. v. Wise*, 61 F. (2d) 481 (C.C.A. 5th 1932); *Sawyer v. Mutual Benefit Health and Accident Ass'n.* 121 Neb. 504, 237 N.W. 615 (1931); 8 Tex. L. Rev. 596. Some of the cases demand that the evidence of suicide, if circumstantial, exclude every reasonable hypothesis of accident. *Michalek v. Modern Brotherhood of America*, 179 Iowa 33, 161 N.W.

125 (1917); *Lindahl v. Supreme Court I.O.F.*, 100 Minn. 87, 110 N.W. 358 (1907); *Sweney v. Northwestern Mut. Life Ins. Co.*, 251 Ill. App. 1 (1928). The better view is that not so great a degree of proof is necessary. *Von Crome v. Travelers' Ins. Co.*, 11 F. (2d) 350 (C.C.A. 8th 1926); *Modern Woodmen of America v. Craiger*, 175 Ind. 30, 92 N.E. 113 (1910); *Hawkins v. Kronich Cleaning, etc., Co.*, 157 Minn. 33, 195 N.W. 766, 36 A.L.R. 394 (1923) (overruling the Lindahl case); 23 Col. L. Rev. 286. This difference is due to the fact that the courts holding the former view consider the presumption as evidence.

HUBERT C. MERRICK

Practice—Power of Court To Amend Sentence at Subsequent Term—Probation Act—[Federal].—One Antinori was sentenced to four years imprisonment in 1929, but sentence was suspended and he was placed on probation under the Probation Act, 43 Stat. 1259, 1260 (1925), 18 U.S.C. §§ 724–727 (1926). In 1931 Antinori's probation was revoked and he was sentenced to twelve months' imprisonment. This sentence was affirmed in *United States v. Antinori*, 59 F. (2d) 171 (C.C.A. 5th 1932) and the mandate of affirmance was duly entered by the district court on July 18, 1932. On the same day the defendant district judge undertook to amend the twelve months' sentence to imprisonment for one hour. *Held*, the trial court did not have power to amend the sentence after the mandate of affirmance had been duly entered and the term at which the original sentence of twelve months had been imposed had expired. *United States v. Akerman*, 61 F. (2d) 570 (C.C.A. 5th 1932).

The problem here raised is with regard to the effect of the probation act on the federal court's power to amend sentence after the term at which sentence was imposed has expired. Section 724, 18 U.S.C. (1926) provides for suspension of sentence and probation of the defendant, but: ". . . . The Court may revoke or modify any condition of probation or may change the period of probation." The district court had power to enter the sentence of twelve months imposed in 1931 even though that sentence was imposed after the term of the original sentence had expired. *Riggs v. United States*, 14 F. (2d) 5 (C.C.A. 4th 1926), certiorari denied in 273 U.S. 719, 47 Sup. Ct. 110, 71 L. Ed. 857 (1926); *United States v. Antinori*, 59 F. (2d) 171 (C.C.A. 5th 1932).

The words of the statute are capable of several reasonable interpretations as to just what power the court has over its judgments. Intrinsically the language of the statute could be construed to impart to the courts the power to make what orders they deem advisable, either as to probation or sentence, at any time within the period for which the defendant might originally have been sentenced. Thus the court in the instant case could have imposed the one hour sentence even after term because the period for which defendant might originally have been sentenced does not expire until 1933. This may be an extremely liberal interpretation of the language of the act but it is essentially plausible, especially as, according to the cases, this is legislation of a highly remedial character and as such is entitled to a liberal construction. *Riggs v. United States*, 14 F. (2d) 5, 7, 9 (C.C.A. 4th 1926); *United States v. Chafina*, 14 F. (2d) 622 (D.C. Ariz. 1926); *Reeves v. United States*, 35 F. (2d) 323 (C.C.A. 8th 1929); and see *Beggs v. Superior Court of Santa Clara County*, 179 Cal. 130, 133 *et seq.*, 175 Pac. 642, 644 *et seq.* (1918) (dissenting opinion), for a good discussion of the purpose and construction of such legislation. Under this view the court would have power to make what orders it